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26 TEXAS EASTERN OVERSEAS, INC.

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28
**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

29 AMERIPRIDE SERVICES INC.,

30 Plaintiffs,

31 vs.

32 VALLEY INDUSTRIAL SERVICES, INC.,
33 a former California corporation, et al.,

34 Defendants.

Case No. 2:00-cv-00113-MCE-DB

**STIPULATION AND ORDER
REGARDING TESTIMONY OF JAMES
WARNER, PETER MESARD, AND
JEFFREY HICKS**

Trial Date: October 17-19, 2016

Time: 9:00 a.m.

Courtroom: 7

Judge: Hon. Morrison C. England, Jr.

Complaint Filed: January 20, 2000

FILED

OCT 19 2016

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY CLERK**

1 Plaintiff AMERIPRIDE SERVICES INC. ("AmeriPride") and Defendant TEXAS
2 EASTERN OVERSEAS, INC. ("TEO") (collectively, the "Parties"), by and through their
3 respective counsel, stipulate with respect to the testimony of James Warner, Peter
4 Mesard, and Jeffrey Hicks, as follows:

5 **STIPULATION**

6 1. Pursuant to the Final Pretrial Order, the Court has set a three (3) day
7 bench trial for Monday, October 17, 2016 through Wednesday, October 19, 2016.

8 2. To expedite the trial, the Parties previously stipulated to a procedure for
9 submitting deposition testimony at trial. Dkt. 1058.¹ The Parties' stipulation was
10 adopted as an order of this Court on August 10, 2016 ("Order"). Id.

11 3. Both AmeriPride and TEO have designated testimony from the 2006
12 depositions of Peter Mesard and Jeffrey Hicks for use at trial pursuant to the Order.
13 The Parties have also filed objections and counter-designations to the testimony
14 designated by each party. Dkts. 1066 and 1068.

15 4. AmeriPride and TEO have designated or counter-designated testimony
16 from the 2012 trial in this case by TEO's then-expert, James Warner. See Dkts. 1068
17 and 1068-1.

18 5. With respect to the 2012 trial testimony of James Warner, and the
19 deposition testimony of Peter Mesard and Jeffrey Hicks, AmeriPride and TEO agree
20 that they will withdraw their objections to these transcripts based on the grounds that
21 these three witnesses were not disclosed as experts in accordance with Federal Rule
22 of Civil Procedure 26(a)(2) and the Court's July 20, 2015 Pretrial Scheduling Order
23 (Dkt. 988). The Parties agree to not object to the transcripts at trial based on this
24 ground. Further, the parties will withdraw their objections to the transcripts on the
25 grounds that they are hearsay.

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28 ¹ "Dkt." refers to the Court's ECF Docket number for this case.

7. With respect to the transcripts of James Warner's 2012 trial testimony, AmeriPride and TEO agree not to object to the use of Mr. Warner's 2012 trial testimony on the grounds that it is not deposition testimony subject to the Order. Subject to any objections made under Paragraph 6 of this Stipulation, the Parties request the Court to receive the designated portions of Mr. Warner's 2012 trial testimony in lieu of live testimony.

7. With respect to the transcripts of James Warner's 2012 trial testimony, AmeriPride and TEO agree not to object to the use of Mr. Warner's 2012 trial testimony on the grounds that it is not deposition testimony subject to the Order. Subject to any objections made under Paragraph 6 of this Stipulation, the Parties request the Court to receive the designated portions of Mr. Warner's 2012 trial testimony in lieu of live testimony.

8. Good cause exists for the Court to grant the request because: (1) the use of designated testimony will facilitate a more efficient trial; (2) the agreement will encourage efficient pretrial activities between Parties; (3) the agreement will not prejudice the Parties or the Court and will not delay the case; and (4) the stipulation will not affect the Parties' compliance with any other requirements in the Court's Final Pretrial Order.

Date: October 14, 2016

BASSI, EDLIN, HUIE & BLUM LLP

By: /s/ Fred M. Blum
FRED M. BLUM
ERIN K. POPPLER
Attorneys for Defendant
TEXAS EASTERN OVERSEAS, INC.

Date: October 14, 2016

HUNSUCKER GOODSTEIN PC

By: /s/ Brian L. Zagon
 PHILIP C. HUNSUCKER
 BRIAN L. ZAGON
 MARC A. SHAPP
 Attorneys for Plaintiffs
 AMERIPRIDE SERVICES INC.

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2 Date: October 14, 2016

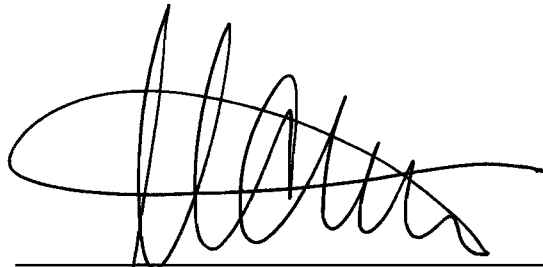
PERKINS MANN & EVERETT, APC

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4 By: /s/ Lee N. Smith
LEE N. SMITH
Attorneys for Plaintiffs
AMERIPRIDE SERVICES INC.

8 ORDER

9 IT IS SO ORDERED.

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11 Date: 10.19.16

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14 HON. MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE
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